

1 2 3 4 5	Steven L. Holley (appearance pro hac vice) (holleys@sullcrom.com) Shane M. Palmer (SBN 308033) (palmersh@sullcrom.com) SULLIVAN & CROMWELL LLP 125 Broad Street New York, New York 10004 Telephone: (212) 558-4000 Facsimile: (212) 558-3588	
6	Brendan P. Cullen (SBN 194057)	
7	(cullenb@sullcrom.com) SULLIVAN & CROMWELL LLP	
8	1870 Embarcadero Road Palo Alto, California 94303 Telephone: (650) 461-5600	
9	Telephone: (650) 461-5600 Facsimile: (650) 461-5700	
10	Attorneys for Non-Party Spotify USA Inc.	
11	UNITED STAT	ES DISTRICT COURT
12	NORTHERN DISTRICT OF CALIFORNIA	
13)
14	EPIC GAMES, INC.,) Case No. 4:20-cv-05640-YGR-TSH
15	Plaintiff,	DECLARATION OF SHANE M. PALMERPURSUANT TO CIVIL LOCAL RULE
16	V.	79-5(e)(1) AND IN SUPPORT OF EPIC'S ADMINISTRATIVE MOTION TO FILE
17	APPLE INC.	UNDER SEAL EXHIBITS TO ITSADMINISTRATIVE MOTION FOR
18	Defendant.) LEAVE TO FILE SUR-REPLY (DKT NO. 707)
19		
20		
21		
22		
23		
24		
25		
26		
27		
28 SULLIVAN & CROMWELL LLP		

DECLARATION OF SHANE M. PALMER IN SUPPORT OF EPIC'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL (DKT. NO. 707)

CASE NO. 4:20-cv-05640-YGR-TSH

I, Shane M. Palmer, declare as follows:

- 1. I am an attorney at the law firm of Sullivan & Cromwell LLP, and counsel to Non-Party Spotify USA Inc. ("Spotify"). I am a member in good standing of the Bars of the States of New York and California and a member of the Bar of this Court. I submit this declaration pursuant to Local Civil Rule 79-5(e) in support of Epic Games, Inc.'s ("Epic") Administrative Motion to File Under Seal Exhibits to Its Administrative Motion for Leave to File Sur-Reply (Dkt. No. 707), which was filed on May 18, 2021. I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts.
- 2. On May 18, 2021, Epic filed an Administrative Motion for Leave to File Sur-Reply in Response to Apple Inc.'s ("Apple") Reply in Support of Its Motion to Strike Written and Oral Testimony of Dr. Michael I. Cragg (Dkt. No. 706). Epic filed its proposed Sur-Reply as an attachment to that Administrative Motion, along with a Declaration of Yonatan Even in support of its Sur-Reply (Dkt. Nos. 706-2, 706-3). Epic also filed, as Exhibit A to Mr. Even's Declaration, a redacted version of a document that Spotify produced to the parties in this litigation, bearing Bates numbers SPOT-EPIC-00001047 through SPOT-EPIC-00001066 (Dkt. No. 706-4). The redacted version of Exhibit A to Mr. Even's Declaration appears to be the same redacted version of SPOT-EPIC-00001047 that Spotify filed concurrently with its Administrative Motion to Seal Portions of SPOT-EPIC-00001047 (Dkt. No. 692-4) on May 17, 2021.
- 3. On May 20, 2021, the Court granted Spotify's Administrative Motion to Seal Portions of SPOT-EPIC-00001047, finding that the document "reflect[s] highly confidential information including recent internal user data, the release of which would competitively harm Spotify." (*See* Dkt. No. 715, at 3.)
- 4. Because the unredacted version of Exhibit A to Mr. Even's Declaration in Support of Epic's Sur-Reply (Dkt. No. 707-3) is identical to a document that the Court has already ordered sealed, the unredacted version of Exhibit A should also remain sealed for the reasons stated in the Declaration of Benjamin Kung in Support of Spotify's Administrative Motion to Seal Portions of SPOT-EPIC-00001047 (Dkt. No. 692-1) filed on May 17, 2021. Only the redacted

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IVAN ELL LLP

SULL

version of Exhibit A to Mr. Even's Declaration (Dkt. Nos. 706-4, 707-4) should be viewable by the public on the Court's docket.

5. At my request, counsel for Apple and Epic provided me with unredacted copies of the following documents filed in connection with Apple's Motion to Strike Written and Oral Testimony of Dr. Michael I. Cragg: (i) Apple's Brief RE: Motion to Strike (Dkt. No. 657) and the Declaration of Rachel S. Brass in Support thereof (Dkt. No. 657-1); (ii) Epic's Opposition to Apple's Motion to Strike (Dkt. No. 697); (iii) Apple's Reply in Support of Its Motion to Strike (Dkt. No. 703); and (iv) Epic's Sur-Reply in Response to Apple's Reply in Support of It Motion to Strike (Dkt. No. 706-2). Spotify takes no position on whether the redacted information in these documents is appropriate for sealing.

I declare under penalty of perjury that the foregoing is true and correct. Executed this May 21, 2021, at Brooklyn, New York.

/s/ Shane M. Palmer Shane M. Palmer